IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.5408 OF 2007

Arun Bandopant Bapat & ors.... Petitioner

versus

Shankar Sitaram, Bapat & ors..... Respondent.

Shri Nitin Mulye i/b Girish Godbole for the petitioner
Shri P.S.Dani i/b S.A. Rajeshirke for respondent no.1.

CORAM; A.P. DESHPANDE, J.
DATED; 13TH AUGUST, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. The petitioner's father by name Bandopant was the real brother of respondent nos.1 and 2. The petitioner's predecessor in title has filed a suit for partition and separate possession. The suit came to be decreed and each of the petitioners came to be granted 1/3rd share in the property. In so far as agricultural lands are concerned, the papers were sent to Collector under section 54 of CPC for effecting the partition. The proceedings under section 54 are being fought. The petitioner has been placed in possession of the land in question in execution of the decree for partition and separate possession. However, the

correctness thereof is sub judice in the form of an appeal pending on the file of SDO. The SDO has rejected the stay application and has fixed the appeal for hearing. In this situation, the present writ petition has been filed virtually seeking stay of delivery of possession till SDO decides the appeal. My attention has been invited to an order passed by this court in Consent Terms whereby parties have agreed for denovo consideration of the partition proceedings by Tasasildar and then further agreed that subject to the final adjudication of the partition proceedings, the petitioner shall continue to be in possession of the suit lands. In view of he said stipulation, the learned counsel for the petitioner submtis that SDO who is ceased of the appeal from the order of Tahasildar, should have granted stay. It is thus contended that the petitioner would loose his possession if no stay is granted.

2. Per contra the learned counsel Mr. Dani appearing for the respondent has submitted that the petitioner is trying to take advantage of the possession over the suit land and is not rendering the proper account and not depositing the income from the land as agreed in clause (4) of the Minutes of the Consent Orders. It is thus urged that SDO be directed to consider the respondent’s submission touching non-compliance of

cluse (4) by the present petitioner and seeks appropriate order in that regard from SDO. Having regard to the totality of the facts and circumstance, I am of the clear view that SDO has committed a patent illegality in rejecting the stay application filed by the present petiitoner pending consideration of the appeal. Hence the impguned order dated 11-7-2007 is quashed and set aside. It is directed that the parties shall maintain statusquo in regard to the possession of the suit land till the decision of the appeal by SDO. The SDO shall proceed to decide the appeal as expeditiously as possible and preferably within a period of three months from today. Needless to mention that the SDO shall decide the appeal in accordance with the law after afforing reasonable opportunity of hearing to all the concerned parties. SDO is also directed to pass appropriate order touching the submisison of the respondent in regard to the alleged non compliance of consent term included in clause (4) of the Minutes of the consent order passed by this court while disposing of the appeal.

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